

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CRYSTAL STARNES,

Plaintiff,

v.

Civil Action No.: 2:17-cv-01304-CB

COURT OF COMMON PLEAS OF BUTLER
COUNTY, 50th JUDICIAL DISTRICT;
THOMAS DOERR, individually; and
THOMAS HOLMAN, individually;

Defendants.

MOTION TO DISMISS SECOND AMENDED COMPLAINT
PURSUANT TO FED.R.CIV.P. 12(b)(6)

Defendant Thomas Doerr (“Moving Defendant”), through undersigned counsel, respectfully submits the following Motion to Dismiss the Third Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6), based upon the following considerations:

1. Plaintiff commenced this civil action on October 10, 2017, asserting, as to Moving Defendant, claims under 42 U.S.C. § 1983 for alleged violation of her rights under the First and Fourteenth Amendments of the U.S. Constitution.
2. Plaintiff thereafter filed an Amended Complaint (Doc. 14) pursuant to the Court’s Order of November 3, 2017 (Doc. 11), denying Plaintiff’s motion for leave to proceed under a pseudonym.
3. Counsel for Moving Defendant thereafter conferred with counsel for Plaintiff regarding their intent to move for dismissal of the Amended Complaint, and the grounds that would be asserted in support of such a motion.
4. Plaintiff then filed a Second Amended Complaint on January 16, 2018 (Doc. 20), in response to which Moving Defendant, after conferring and consulting with Plaintiff’s counsel,

filed a Motion to Dismiss Second Amended Complaint Pursuant to Fed.R.Civ.P. 12(b)(6) on February 6, 2018 (Doc. 25).

5. After extensive briefing in regard to Moving Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint, the Court issued a Memorandum and Order (Doc. 42) on July 26, 2018, granting in part and denying in part Moving Defendants' Motion and permitting Plaintiff the opportunity to further amend her Complaint.

6. On August 3, 2018, Plaintiff filed a Third Amended Complaint making new allegations in Paragraphs 58, 61, 63, and 105 of the Third Amended Complaint relating to Plaintiff's alleged gender discrimination claim.

7. Moving Defendant hereby moves to dismiss the Third Amended Complaint for the following reasons:

- As fully set forth in Moving Defendant's Brief in Support of Motion to Dismiss Third Amended Complaint, as well as in Moving Defendant's Brief in Support of Motion to Dismiss Plaintiff's Second Amended Complaint (Doc. 26) which is incorporated herein by reference, the Third Amended Complaint fails to state a legally sufficient claim for violation of Plaintiff's equal protection rights under the Fourteenth Amendment;
- As fully set forth in Moving Defendant's Brief in Support of Motion to Dismiss Third Amended Complaint, as well as Moving Defendants' Brief in Support of Motion to Dismiss Plaintiff's Second Amended Complaint (Doc. 26), it is respectfully submitted that Moving Defendant is entitled to qualified immunity with respect to all of the claims asserted against him in the Third Amended Complaint including Plaintiff's claims for violation of her First Amendment rights of association, her equal protection rights under the Fourteenth Amendment, her claim for retaliation for the alleged exercise of her First Amendment rights of petition and/or expression; and

- Recognizing that with the exception of the four (4) new amended paragraphs in Plaintiff's Third Amended Complaint, the remaining allegations of the Third Amended Complaint are identical to those in the Second Amended Complaint and recognizing that the Court's Memorandum Order (Doc. 42) issued on July 26, 2018, has previously ruled on Moving Defendant's arguments in support of his Motion to Dismiss Plaintiff's Second Amended Complaint, Moving Defendant, for purposes of preserving his appellate rights, incorporates herein by reference his Motion to Dismiss Second Amended Complaint (Doc. 25) and the Brief in Support of Motion to Dismiss the Second Amended Complaint (Doc. 26), his Reply to Plaintiff's Brief in Opposition to Dismiss Second Amended Complaint (Doc. 38) in further support of his Motion to Dismiss Plaintiff's Third Amended Complaint.

8. For the above-stated reasons, pursuant to Federal Rule of Civil Procedure 12(b)(6), Moving Defendant respectfully submits that he is entitled to the dismissal, with prejudice, of all claims asserted against him in the Third Amended Complaint.

WHEREFORE, Defendant, Thomas Doerr, respectfully requests that this Honorable Court enter an Order dismissing the Third Amended Complaint, with prejudice, as to all claims asserted against him.

Respectfully submitted,

THOMAS, THOMAS & HAVER LLP

By: /s/ Thomas P. McGinnis

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CERTIFICATE OF COMPLIANCE

Counsel for Moving Defendant hereby certify that they have conferred in good faith with counsel for Plaintiff, regarding whether the pleading deficiencies of the Third Amended Complaint, raised in the foregoing Motion to Dismiss, could be resolved. The parties were unable to reach such agreement.

Respectfully submitted,

THOMAS, THOMAS & HAVER LLP

By: s/ Thomas P. McGinnis

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